The Fair and Accurate Credit Transaction Act (FACTA)

The Fair and Accurate Credit Transaction Act of 2003 (FACTA) added new sections to the federal Fair Credit Reporting Act, intended primarily to help consumers fight the growing crime of identity theft. Accuracy, privacy, limits on information sharing, and new consumer rights to disclosure are included in FACTA.

The following is a summary of the key provisions of FACTA:

- Giving every consumer the right to their national credit report free of charge every year,
- Helping prevent identity theft before it occurs by requiring merchants to leave all but the last five digits of a credit card number off store receipts,
- Creating a national system of fraud detection to make identity thieves more likely to be caught,
- Establishing a nationwide system of fraud alerts for consumers to place on their credit files,
- Mortgage loan originators must provide credit scores, and information on key factors lowering a consumer's score to those who apply for mortgages,
- Requiring lenders and credit agencies to take action before a victim even knows a crime has occurred,
- Requiring regulators to devise a list of red flag indicators of identity theft, drawn from the patterns and practices of identity thieves. Regulators will be required to evaluate the use of these red flag indicators in their compliance examinations of financial institutions, and impose fines where disregard of red flags has resulted in losses to customers.

Red Flags

On October 31, 2007, a joint committee of the OCC, Federal Reserve Board, FDIC, OTS, NCUA and the Federal Trade Commission passed the final legislation for Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA), also known as the Identity Theft Red Flags and Notices of Address Discrepancy or "Red Flags Rule." The rule requires that all organizations subject to the legislation must develop and implement a formal, written and revisable "Identity Theft Prevention Program" to detect, prevent and mitigate identity theft. An enforcement date for the Rule has been set for June 1, 2010.

Under the Red Flags' Rules, mortgage loan originators must develop a written program that identifies and detects the warning signs of identity theft. A Red Flag compliance program should address and detail company policies and procedures that protect against identity theft during the processing of a mortgage loan application. The program must also describe appropriate responses that would prevent and mitigate action if a security breach occurs and detail a plan to update the program. The program must be managed by the Board of Directors or senior employees of the financial institution or creditor, include appropriate staff training, and provide for oversight of any service providers.